SUPREME COURT, U.S.

No. 216

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

NATIONAL LABOR RELATIONS BOARD, *Petitioner*,

v.

ALLIS-CHALMERS MANUFACTURING COMPANY and INTERNATIONAL UNION, UAW-AFL-CIO (Locals 248 and 401), *Respondents*.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNION

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MISCELLANEOUS

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Opinions Below

The initial opinion of the Court of Appeals for the Seventh Circuit was issued on September 13, 1965, and appears in the Record at pp. 84 to 93. The majority and dissenting opinions in the Court of Appeals for the Seventh Circuit on rehearing *en banc*, issued on March 11, 1966, are reported at 358 F. 2d 656 and appear in the Record at pp. 96 to 123.

Jurisdiction

The opinions and judgment of the Court of Appeals for the Seventh Circuit were entered on March 11, 1966. The petition for writ of certiorari was filed on June 9, 1966, and certiorari was granted on October 10, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1) and Section 10(e) of the National Labor Relations Act, as amended (29 U.S.C. 160(e)).

Question Presented

Whether a union which fines a member-employee for crossing the union's picket line established in support of a lawful strike authorized by a majority of the union's membership and attempts to collect such fine by court action, thereby restrains or coerces the member-employee in violation of Section 8(b)(1)(A) of the National Labor Relations Act.

Statute Involved

Section 7 of the National Labor Relations Act (61 Stat. 136, 29 U.S.C. 151, *et seq.*) provides:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations * * * and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Section 8(b)(1)(A) of the National Labor Relations Act provides:

> Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: *Provided*, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein.

Statement

This Court has granted review of the unprecedented ruling by the Seventh Circuit that the National Labor Relations Act prohibits labor unions from fining their members for violation of their basic organizational obligations. Because the majority opinion below omits many pertinent facts and is incorrect about others, we set forth herein the full sequence of events from which arises the issue before this Court for resolution.

1. The present case involves the disciplining of certain members of two Wisconsin locals of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO, who violated their organizational obligations by continuing to work during duly authorized strikes for improved employment conditions. The membership of Local 248 of the Union is comprised of employees of the Allis-Chalmers Company at its West Allis works, and Local 401 members are employed at the Company's LaCrosse facility.

2. Allis-Chalmers employees who belong to the UAW are members by their own choice. The applicable contracts between the Union and Allis-Chalmers do not require employees to join the Union; they require only that an employee become and remain a member of the Union "to the extent of paying his monthly dues" (R. 34). Before becoming UAW members, Allis-Chalmers employees were required like all others to apply for membership in the appropriate local union under Article 6, Section 2, of the

UAW Constitution (R. 35),[1] and this the employees herein concerned did do (see R. 60). Following such application, every accepted employee was sworn into the Union (R. 58-61). Pursuant to Article 43 of the UAW Constitution, he pledged to honor his obligations to the Union Constitution and its rules and regulations and to bear faithful allegiance to the organization (R. 38).[2] Only upon thus accepting the duties of allegiance does an employee become a member of the Union (R. 38). Pursuant to this procedure, the oath of membership was duly administered to all new Allis-Chalmers members prior to their enrollment in the Union (R. 58-61). Members subsequently desiring to withdraw could resign or terminate membership pursuant to Article 6, Section 16, of the UAW Constitution (Stip. Exh. No. 4) within a 10-day period prior to the end of any year. Although such withdrawal would have had no effect upon their employment status, the UAW members herein involved did not invoke this privilege at any time before they were disciplined for violating their obligation of allegiance to the organization and their fellow members; nor have any of them subsequently sought to resign from the Union (R. 30, 97).

3. Solidarity in an economic strike is a matter of intense concern to the UAW and its locals, as it is to all unions. Numerous provisions of the UAW Constitution (see R. 38-41) control conditions under which strikes may and may not be engaged in by locals, and require membership ad-

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[1] The 1959 UAW Constitution was attached as Exhibit No. 4 to the Stipulation of Facts (hereafter "Stip") upon which this case was presented to the Labor Board, and it is before this Court.

[2] "I, _____, pledge my honor to faithfully observe the Constitution and laws of this Union . . .; to comply with all the rules and regulations for the government thereof; not to divulge or make known any private proceedings of this Union; to faithfully perform all the duties assigned to me to the best of my ability and skill; to so conduct myself at all times as not to bring reproach upon my Union, and at all times to bear true and faithful allegiance to the International Union, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW)."

herence to the common interest (see Art. 41 and Art. 6). In addition, Article 2, Section 3, requires each member to "support strike action" duly undertaken in accordance with the Constitution (R. 35), and the allegiance which he pledges in his oath of membership (R. 38) secures his acceptance of this fundamental obligation. Defiance of the collective determination to engage in or to refrain from a strike is thus a violation of the Constitutional obligation of the UAW member to his Union and his fellow members.

4. The Allis-Chalmers strikes leading to the disciplinary fines here in issue were called in 1959 and 1962 in conformity with all of the requirements of the UAW Constitution. Under Article 50 (R. 38-41) there must first be a membership meeting of the local to determine whether a formal strike vote shall be taken. If a strike vote is agreed to by a majority of those present, then (R. 38) "the Local Union Executive Board shall notify all members, and it shall require a two-thirds (⅔) vote by secret ballot of those voting to declare a strike." The 1959 Allis-Chalmers strike by Local 248 was preceded by a formal strike vote of the membership on August 13, 1958, held upon individual notices mailed to all members prior to the taking of the vote, and resulting in a two-thirds strike approval (see R. 97; Stip. Exh. No. 16, pp. 51, 57). Even following that vote, however, the calling of the strike required the prior approval of the International Executive Board, and under the UAW Constitution (Art. 50, Secs. 2, 4, 6, 7) a strike called without such approval could have subjected locals and members to the severest forms of union discipline (R. 39-40). International Union approval was obtained (R. 97), and thereafter, on February 2, 1959, Local 248 commenced an economic strike at West Allis which continued until April 20, 1959. Of the 7,400 members of the striking local, 175 members worked on one or more days during this strike (R. 27). A second economic strike in 1962, similarly

approved, was commenced by both local unions on February 26, 1962, and ended on March 4th. Thirty-four union members, out of a total force of 6,125, worked on one or more days during this strike (R. 29, 32).

5. In due course after each of the Allis-Chalmers strikes, charges were filed and disciplinary proceedings were had against the few UAW members who had violated the Union's rules by working during the strikes. Such proceedings were conducted in conformity with the provisions of Article 30 of the UAW Constitution governing trial of members (R. 31). Those provisions specify (see R. 36-37; Stip. Exh. No. 4) that charges against members must be written and signed by other members, submitted in timely fashion, and served by registered mail upon the accused. They provide rights of speedy trial and representation by counsel before a Trial Committee selected by lot from the general membership. The Trial Committee must submit its written findings within 60 days; a finding of guilty requires a two-thirds vote of the Trial Committee and penalties may include a fine *"not to exceed one hundred dollars"*, but again only upon a two-thirds vote (R. 37). A verdict of guilty and any penalty imposed by the Trial Committee become effective only if approved by a majority of the members voting, by secret ballot, at a membership meeting (R. 37). Full rights of appeal to higher bodies within the Union are preserved to the accused member by Articles 31 and 32 of the UAW Constitution; he has the right of review before the International Executive Board and thereafter by the Constitutional Convention or by the Union's impartial Public Review Board. The 200 members of the Allis-Chalmers locals who worked during the 1959 or 1962 strike were duly tried in conformity with these provisions of the UAW Constitution and upon findings of guilty were fined in various amounts not exceeding $100 (R. 30-32, 43-54).

6. The basis upon which the various Trial Committees

found the members' conduct to have violated their organizational obligations is illustrated by the following extract from one committee's report (R. 47-48):

> ". . . the accused persons attempted to reverse the action of the membership of Local 248 UAW and the International Union, who believed that in order to gain the objectives sought, it was necessary and essential to engage in the strike action. . . .
>
> "Among the duties of a member of Local 248 UAW and the International Union is to consciously seek to understand and exemplify by practice, the intent and purpose of the obligations of a member and to acquit himself as a loyal and devoted member of the Local and the International Union.
>
> "No greater act of disloyalty to the members on strike, to the local union and the International Union, and to the cause to which they have dedicated themselves can be committed by a member than to cross the picket lines which were established and authorized by his own union. The crossing of the picket lines did, in essence, give aid and comfort to the company at the very time when it was necessary to muster all of the moral and economic powers of the Local and International Union to gain the objectives of the strike."

7. Some of the Union members who were disciplined voluntarily paid their fines. The Union instituted legal actions in the courts of Wisconsin against ninety-seven who declined to pay. In suing for collection of the fines imposed, the Union relied upon a leading Wisconsin decision upholding judicial enforcement of union fines—*UAW* v. *Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336 (1958). The suit against one UAW member—Benjamin Natzke—to collect the fine imposed upon him for working during the 1955 Allis-Chalmers strike proceeded to trial in the County Court of

Milwaukee County (see R. 55-76). The opinion of that Court granting judgment for the Union (Stip. Exh. No. 17) was issued on April 26, 1963, and was affirmed by the Circuit Court for Milwaukee County on March 3, 1964; the case is now pending before the Supreme Court of Wisconsin. In upholding and enforcing the Union's assessment of the fine upon member Natzke, the Wisconsin court made the following pertinent finding (Stip. Exh. No. 17, pp. 5-6):

> "Whether or not . . . the defendant could have been compelled to do more than just pay dues and initiation fees need not be determined by the Court in this case. The Court finds that the defendant did in fact do more than this. From the record the Court is satisfied that the defendant was present at the initiation ceremony and with others did take the oath of membership. He did attend the vote at the meeting of August 13, 1958 and he attended the meeting of February 2, 1959. He had by his actions become a member of the Union for all purposes and as such member was subject to all reasonable and non-discriminatory terms and conditions of membership. Under the facts in this case he did become a 'full' member of the Union. Having taken advantage of the prerogatives of Union membership he has assumed all of the duties of membership.
>
> "When a person becomes a member of a labor organization he engages to be bound by its rules. The members of an organization may properly prescribe rules which are non-discriminatory and provide for penalties for violation."

8. Following imposition of fines upon UAW members who worked during the Allis-Chalmers strikes and institu-

tion of the suits for collection, the *Company* filed a charge with the National Labor Relations Board alleging that the Union fines violated Section 8(b)(1) of the Act. After issuance of a Board Complaint and submission of the case upon stipulated facts, the Trial Examiner ruled on January 31, 1964, that the Union had not violated the Act. He found (R. 10) that Section 8(b)(1) of the Act does not come into play when union discipline arises from "infraction of an internal union rule" and the union has made no "attempt to bring about a termination of an employment relationship" as the means of discipline. His holding was based on the ground (R. 9) that "internal union disciplines were not among the restraints intended to be encompassed" by the "restrain or coerce" prohibition of Section 8(b)(1), and that in any event the proviso to that Section clearly leaves union discipline outside the ambit of NLRA restriction.

9. On October 23, 1964, the Labor Board issued its opinion (Member Jenkins concurring and Member Leedom dissenting) finding that no violation of Section 8(b)(1) arises from a union's fining of its members who work during a duly authorized strike (R. 13-18). In so doing, the Board stated (R. 16) that "under certain circumstances" imposition of union fines may violate Section 8(b)(1), but it emphasized that no violation occurs when the norm enforced by union discipline is within *"the competence of the union to enforce."* Concerning this particular case the Board emphasized that (R. 16-17):

> "We cannot conceive of a subject which would be more within its competence, since it involves the loyalty of its members during a time of crisis for the union. The Act does not deprive a union of all recourse against those of its own members who undermine a strike in which it is engaged. When the strike is lawful and the picket line is lawful, we cannot hold

that a union must take no steps to preserve its own integrity."

10. The Allis-Chalmers Company petitioned for review in the Court of Appeals for the Seventh Circuit. On September 13, 1965, Judge Kiley delivered the Court's opinion, for himself and Judges Knoch and Castle, upholding the Labor Board's ruling (R. 84). On the basis of a careful analysis of the legislative history of Section 8(b)(1), the Court found that membership discipline by labor unions was not made a subject of Congressional restriction in the National Labor Relations Act. The several predicates of the Court's 1965 panel opinion are aptly summarized in the subsequent majority opinion of the Court on rehearing *en banc* (R. 100-101):

"In formulating our original opinion, we gave favorable consideration to the following arguments:

1. A member ought not to enjoy all the benefits of union membership while relinquishing none of the advantages of non-union membership.

2. Congress would have been guilty of inconsistency in adopting 29 U.S.C.A. 411(a)(2) which allows unions to enforce reasonable rules as to the responsibility of members with respect to refraining from conduct that interfered with the union's legal and contractual obligations, if Congress were also prohibiting imposition of fines for members who crossed picket lines.

3. If a union's disciplinary powers are limited to expulsion, a union must choose between permitting anarchy in its ranks or depleting its strength, and Congress could not have intended to present unions with so invidious a choice.

4. A fine may be a lesser penalty than expulsion with attendant loss of union insurance and other benefits, and Congress would not have allowed the more severe

while withholding the less serious form of punishment.

5. If a union may not fine strikebreakers, then it cannot fine wildcat strikers and cannot enforce a 'no strike' clause in its contract.

6. An analogy was drawn between an industrial union and a democratic society where the majority vote rules. . . ."

11. Despite these considerations supporting the unanimous panel decision in favor of the Board and the Union, a Company petition for rehearing *en banc* was granted (R. 95). On March 11, 1966, a four-to-three decision of the Seventh Circuit reversed the earlier panel ruling (R. 96). Judges Knoch and Castle who had joined the panel decision changed their views and were joined in a majority opinion by Judges Duffy and Schnackenberg. Separate dissenting opinions were filed by Chief Judge Hastings, Judge Kiley and Judge Swygert (R. 104-123). The majority opinion appears to rest upon three propositions summarized in the dissent by Judge Swygert: "The relevant points cited by the majority in support of its conclusion, and with which I disagree, are: (1) this case involves employees who are involuntary members of the union; (2) the possibility exists that the union might exact crippling and unreasonable fines; and (3) there is no occasion for resorting to legislative history in the application of Sections 7 and 8(b)(1)(A) of the National Labor Relations Act to the facts of this case" (R. 121).

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Before presenting our Argument to this Court we pause to correct two factual errors made by the majority below, which evoked vigorous protest from the dissenting judges (as, for example, Judge Swygert's dissent just quoted). These relate to the majority's suggestion (R. 102) that some Allis-Chalmers employees "may have been forced

into membership" by the Company-UAW union security clause and the assertion (R. 98) that under the Union Constitution individual members might have been fined "thousands of dollars" on a successive-day basis for working during the Allis-Chalmers strikes.

The suggestion that Allis-Chalmers employees were somehow forced into membership in the Union is entirely unfounded. As the dissenting opinion by Judge Kiley emphasizes (R. 118-119), even the Company never made so extravagant a contention and he correctly concludes that "the question of involuntariness was not and is not in the case." The majority's intimation of involuntariness is belied by the incontrovertible fact that the maximum union security permitted by the collective bargaining contract between the UAW and Allis-Chalmers is that an employee become and remain a member of the Union "to the extent of paying his monthly dues. . . ." (R. 34).[3] Indeed, under Sec-

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[3] UAW President Walter P. Reuther in a presentation to a Congressional committee in 1965 underlined the limited thrust of the UAW's union shop requirement, under which no employee can be required *"to participate in any union activity whatever if he does not desire to do so."* Mr. Reuther stated: ". . . there has been much loose talk about 'compulsory unionism' where the union shop prevails; [but] 'compulsory unionism' is a total misnomer. The fact is that under a Federal court decision of 1951 (*Union Starch and Refining Company* v. *NLRB*, 186 F. 2d 1008), a union shop contract may require all employees to pay dues needed for the operation of the union and its performance of its legal and contractual obligations, but no employee may be forced to join the union and participate in any form of union action if he has conscientious scruples or personal objections thereto. In recognition of this import of the Taft-Hartley Act, the standard UAW union shop contract provides that the employee shall be a member of the union only 'to the extent of paying his monthly dues.' And even beyond this limitation, in recognition of genuine moral scruples in individual cases, there exists a special agreement between the UAW and religious groups . . . permitting their members working at 'union shop' plants to contribute to the support of the union's charitable and welfare services in lieu of paying dues and initiation fees, and recognizing their right to abstain from 'attendance at meetings and other union activities.'

"In sum, the pre-Taft-Hartley argument about compulsory unionism has proven to be illusory because under the 1947 law no employee in any State of the Union may be required on pain of discipline or discharge to par-

tion 8(a)(3) this is the outer limit of the union adherence which may be compelled by employment sanctions. That was the conclusion of this Court in *NLRB* v. *General Motors Corp.*, 373 U.S. 734. See also *Radio Officers* v. *NLRB*, 347 U.S. 17, 41; *Union Starch & Refining Co.* v. *NLRB*, 186 F. 2d 1008 (C.A. 7), *cert. den.* 342 U.S. 815. Here the employees involved went beyond the compulsion permitted by Section 8(a)(3) under these authoritative decisions; they applied for union membership and took the oath as regular members of the Union. The Wisconsin trial court expressly so concluded in enforcing the payment of the union fine in the test case arising out of the Allis-Chalmers strikes (see *supra*, p. 8). Thus, there is no basis whatever for the conjecture by the majority below that the union members fined for violating their UAW obligations may have been forced into membership by a union security agreement.

Equally erroneous is the recital in the majority opinion (R. 98) that the maximum fine permitted under the UAW Constitution is $100 "with each crossing of the picket lines treated as a separate offense. Consecutive fines may run into thousands of dollars . . ." The instant case came to the Labor Board and then to the Court of Appeals on a stipulation of facts which shows that no UAW fines imposed exceeded $100, and which nowhere supports the "repetitive fine" reading of the $100 limitation indulged by the majority below. True, one of the local unions herein, in warning the picket-line crossers against further violation, stated that "each day of violation may well constitute a separate offense." But no repetitive fines were thereafter imposed for consecutive days of violation. The case hypothesized by the court below is thus simply not this case as it

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ticipate in any union activity whatever if he does not desire to do so." Hearings on H.R. 77 before a Special Subcommittee of the House Committee on Education and Labor, 89th Cong., 1st Sess., Appendix, p. 902 (1965).

was presented on stipulated facts by the parties. But if one were to go beyond the record into the conjectural area entered by the court below, the fact is that the International Union construes its Constitution's $100 limitation as precluding the treating of each day of work during a strike as a separate violation. A search of its records at counsel's request reveals no single instance wherein a local union has ever imposed a consecutive fine. If a trial board were to impose such a fine, one of the reviewing bodies within the Union hierarchy itself would order it remitted to the $100 level, in order to comport with the UAW Constitution.

In any event, the present case simply does not pose a question of consecutive fines which "may run into thousands of dollars." Counsel for the Union suggested to the Board's Trial Examiner (Hearing of June 11, 1963, Tr. pp. 25-27), that an unreasonable fine (such as one equivalent to annual earnings) would violate due process prohibitions; and he pointed out that there "are no such facts in this case" since the UAW Constitution "prohibits the fining of an individual more than $100." The question for review is whether the fines not exceeding $100 actually imposed upon UAW members who violated their Union allegiance obligations are forbidden by Section 8(b)(1) of the Act. That is the question to which we direct our Argument to this Court.

Summary of Argument

The National Labor Relations Board, in its opinion and in its brief before this Court, demonstrates from the text and the legislative history that Section 8(b)(1) does not restrict labor union discipline over members who violate organizational obligations by such conduct as defiance of a membership-approved economic strike. The Union's brief, rather than repeating the voluminous legislative evidence reviewed in the Board's brief, emphasizes four additional considerations which buttress the Board's reading of the

statute and underline the proposition that union discipline of members remains unaffected by the National Labor Relations Act.

A. *Disciplinary fines were imposed only on Allis-Chalmers employees who had elected to join the Union and to accept the duty of allegiance long recognized as necessary to effective unionism.* The fined UAW members chose to join the Union, thereby deriving major privileges and subjecting themselves to corresponding obligations; having chosen to join and having remained as members, they were not a law unto themselves and had no right to defy the common decision of the membership to engage in a strike for better contract terms.

Section 8(a)(3) of the National Labor Relations Act permits no more compulsion in union security arrangements enforceable by employer discipline than the payment of periodic dues. As this Court ruled in *NLRB* v. *General Motors Corp.*, 373 U.S. 734, 742, under that provision "'Membership' as a condition of employment is whittled down to its financial core." Since in Section 8(a)(3) Congress limited union security to the payment of dues and thus preserved the freedom of employees from compulsory unionism, it becomes an idiosyncratic and perverse construction to read Section 8(b)(1)—enacted concurrently with 8(a)(3)—as prohibiting discipline of members who choose unionism and then violate their sworn obligation of allegiance. Union obligations undertaken by an employee have long been recognized as binding upon him after he has accepted membership. See *Elgin, Joliet* v. *Burley*, 325 U.S. 711, 327 U.S. 661; *NLRB* v. *UAW*, 320 F. 2d 12. Once Congress forbade compulsory membership, the presumption is clear that it left undisturbed the established principle that unions, like a myriad of other voluntary associations, may define and secure the duties of those who choose to be members.

B. *Adherence to a membership strike for improved working conditions is a time-honored first duty of unionism.* Indeed, among all the recognized obligations of union membership, the clearest is the obligation to respect the collective strike—the most important weapon of trade unionism.

In view of the central significance of the strike to the existence of the union and the perpetuation of its members' interests, it has long been recognized that unions may properly discipline members who defy an authorized strike. And no less necessary to union control of the valued strike weapon is union power to discipline wildcat strikers—a power which the statutory construction by the court below would equally impair. In construing the Act as precluding a union from fining members who work during an authorized strike, the court below also precludes the fining of members who engage in an unauthorized wildcat strike. Cf. *Parks* v. *IBEW*, 314 F. 2d 886, 905-906, *cert. den.* 372 U.S. 976.

Congressional recognition and protection—in Norris-LaGuardia in 1932, in Wagner in 1935, and in Taft-Hartley in 1947—of the strike as labor's indispensable weapon, reflects the prevalent understanding derived from our national labor relations experience. Moreover, in 1947 there was Congressional recognition of necessary union disciplinary power during the Senate debates on an amendment which would have limited such power in connection with strikes. And the necessity of union disciplinary power to assure continuing allegiance by the membership has even more recently been Congressionally confirmed. In the 1959 Landrum-Griffin Act (Section 101(a)(2) and (a)(5)) union authority to require and enforce by discipline the members' allegiance to the common cause was expressly secured by the Congress. Every indication given by Congress both in 1947 and 1959 was to leave unimpaired traditional union

disciplinary power to assure membership solidarity during authorized strikes and the ability to prevent unauthorized strikes.

C. *Reasonable fines collectible by legal action offend no Congressional norm and are frequently less rigorous than summary expulsion from union membership.* This is the simple answer to the Company's argument, which the lower court appears to have accepted, that the Union violated Section 8(b)(1) by choosing as the means of discipline the imposition of judicially-collectible monetary fines rather than suspension or expulsion. Indeed, no decision prior to this case either under the National Labor Relations Act or the common law has denied union authority to fine members who violate their organizational obligations. Rather, that authority has been frequently confirmed since an historic New York case decided in 1867 (see *infra*, pp. 38 to 40).

The Company and the court below appear to be arguing that judicially-collectible union fines are inherently coercive. But rather than *coercion*, judicial processes are *remedies* to secure the observance of contractual agreements and other binding rules of conduct. Actually, upon comparing the relative compulsions and rigors of reasonable judicially-collectible fines on the one hand and summary expulsion from a union on the other, it seems evident that the former are often the less severe: Expulsion is a terminal act of self-help by the union which may have the most serious unfavorable consequences upon the individual affected; suit for collection of a disciplinary fine evokes the judicial process which centuries of experience approve as the best means for protecting the rights of contending parties. Congress nowhere having disparaged union disciplinary fines, judicial engrafting of their prohibition upon the statute would arrogate the legislative function.

D. *The statute's purpose to promote effective collective bargaining precludes the view that Section 7 safeguards a union member's right to defy the common cause as determined by majority rule.* Thus, even if all of the 8(b)(1) considerations and arguments we advance were somehow to be rejected by this Court, there would still remain a serious question whether under Section 7 itself Congress has secured a right of employees who have joined a union to defy and subvert authorized union action.

Competing rights under Section 7 are often in a state of "tension" (*NLRB* v. *Drivers*, 362 U.S. 274, 280), and the right to strike as well as the right not to strike may fall before other protected values secured by the NLRA. See, e.g., *NLRB* v. *Sands Mfg. Co.*, 306 U.S. 332; *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71; *American Ship Building Co.* v. *NLRB*, 380 U.S. 300, 310. The dissident conduct of the union members fined herein was not an assertion by them of a Section 7 statutory right to refrain from forming, joining and assisting unions—a right they had renounced by joining the UAW; rather, it was a violation of the right of the *striking* unionists to engage in a Section 7 activity without subversion by their fellow members.

Majority rule is the necessary foundation of employees' bargaining rights under the federal labor law. See *Ford Motor Co.* v. *Huffman*, 345 U.S. 330; *J. I. Case Co.* v. *NLRB*, 321 U.S. 332, 339. In a strike for improved bargaining terms that rule clearly binds the union's own members. Those unwilling to abide by the majority rule system in the union have the alternative to forego union membership. What they cannot do is simultaneously to claim union membership and a statutory right to abstain from union allegiance.

Argument

The National Labor Relations Board, after careful review of the text and legislative history of Section 8(b)(1) of the Act (see R. 15), ruled that no violation of that provision inheres in labor union discipline of members for violating their duty of organizational allegiance. The majority opinion below declines the legislative evidence and applies its own view of what constitutes impermissible restraint or coercion; it rules that in disciplining union members for working during a duly authorized economic strike, the Union so acted as to "restrain or coerce employees" in violation of Section 8(b)(1). The court below has thus elected to "make a fortress out of the dictionary" (*Markham* v. *Cabell*, 326 U.S. 404, 409) instead of applying a sensitive construction which conforms with the actual intention of the Congress.

That intention, clearly shown by the legislative evidence concerning Section 8(b)(1) recited in the brief for the Labor Board, was not to affect union disciplinary power over members. No purpose would be served by our repetition of the voluminous legislative evidence reviewed in the Board's brief, and we merely note our full agreement with the position there espoused—that this evidence makes crystal clear that Section 8(b)(1) does not restrict the power of labor union discipline over members who violate organizational obligations by such conduct as defiance of a membership decision to engage in an economic strike. In the area of membership discipline, whether it involves a union member working during an authorized strike or a union member joining a wildcat strike, union authority has not been subjected by the Congress to regulation by the National Labor Relations Board.[4]

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[4] Of course, Section 8(b)(1) does come into play if a union, utilizing its statutory bargaining authority, induces an employer to dismiss or otherwise discipline an employee because he has violated his membership obli-

All apart from the conclusive legislative evidence, however, there are other major considerations which support the Board's reading of the statute. Thus, as the facts of the case presently before the Court underline, union discipline remains unaffected by the National Labor Relations Act because (1) membership in the union is not compulsory, (2) allegiance to a duly authorized economic strike is a necessary and time-honored first principle of unionism, (3) reasonable fines collectible by judicial suit are often less rigorous than the summary expulsion from membership which Congress expressly preserved to unions, and (4) the policy of the Act of fostering collective bargaining requires that unions be able to maintain allegiance by members to the common interest as determined by majority rule. Each of these four supporting considerations underlines the correctness of the Labor Board's view and demonstrates the error of the Seventh Circuit's ruling that union efforts to assure the allegiance of members have been impaired by the Congress. We deal with each of these considerations separately below.

A. *Disciplinary Fines Were Imposed Only on Allis-Chalmers Employees Who Had Elected to Join the Union and to Accept the Duty of Allegiance Long Recognized as Necessary to Effective Unionism.*

1. *Union Membership Not Compulsory.* The UAW members who were fined for working during the Allis-Chalmers strikes had chosen to join the Union, thereby deriving major privileges and subjecting themselves to corresponding obligations. Having joined the Union and having re-

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gation to the union. In that situation, Congress has made clear that observance by the member-employee of his obligation to the union and of his obligation to the employer are not to be comingled by the imposition of employment sanctions to enforce union allegiance. See *Radio Officers* v. *NLRB*, 347 U.S. 17.

mained as members rather than availing themselves of the privilege of resigning, they defied the common decision of the membership to engage in a strike for better contract terms. If union discipline of those who work during a strike was unacceptable to any of the fined persons, they could have avoided it by refusing to join the Union in the first place or by thereafter declining to remain members. Yet the record shows that not a single one of the fined members, even *since* discipline was imposed, has chosen to resign from the Union (R. 30). It is illuminating, too, that this case does not arise from complaint by one of the affected members but from Labor Board charges filed and pressed on to judicial review by the Allis-Chalmers Company. While we make no contention that the Company lacks standing to litigate the present issue, the fact remains that no Allis-Chalmers employee has protested the UAW fines to the Labor Board.

As long ago as 1951 the Court of Appeals for the Seventh Circuit—which has jurisdiction in the area of the Allis-Chalmers plants here involved—definitively ruled that Section 8(a)(3) of the National Labor Relations Act permits no more compulsion in union security arrangements enforceable by employment discipline than the payment of periodic dues. *Union Starch & Refining Co.* v. *NLRB,* 186 F.2d 1008, *cert. den.* 342 U.S. 815. At the time of the 1959 and 1962 Allis-Chalmers strikes, it was thus already established that no employee could be required to support the Union in any manner beyond the payment of dues moneys; and this was exactly what the Allis-Chalmers contract made clear in requiring UAW adherence by the employee only "to the extent of paying his monthly dues . . ." What *Union Starch* held and what the UAW-Allis-Chalmers contract contained is the maximum union security permissible. In *NLRB* v. *General Motors Corp.,* 373 U.S. 734, 742, this Court carefully examined the statute and concluded that "Under the second proviso to § (8)(a)(3), the burdens of

membership upon which employment may be conditioned are expressly limited to the payment of initiation fees and monthly dues . . . 'Membership' as a condition of employment is whittled down to its financial core." The considered and unanimous judgment of this Court in *General Motors* was that under the NLRA financial support is the outer limit of union allegiance which may be enforced by employment sanctions. Thus, it is irrefutable that employees who desire to avoid union discipline may do so simply by declining to join the union, and thus remain free of union obligations.

Since in Section 8(a)(3) of the statute Congress has preserved the freedom of employees from compulsory unionism it becomes an idiosyncratic and perverse construction to read Section 8(b)(1)—enacted concurrently with Section 8(a)(3)—as prohibiting discipline of members who choose unionism and then violate their sworn obligation of allegiance. Since Congress in 1947 forbade compulsory union membership and allegiance, there is no arguable ground for suggesting that by mere implication it simultaneously forbade unions—alone amongst a myriad of voluntary associations—from securing their members' organizational allegiance by appropriate discipline of violators. Once it forbade compulsory membership, the proper presumption is that, far from distinguishing between labor unions and other organizations, *Congress left undisturbed the established principle* that the union movement may define the duties of those who voluntarily join with it, and that the law will not curtail but will enforce the duties so defined.

That is exactly the construction which the First Circuit adopted in its reasoned opinion in *NLRB* v. *UAW*, 320 F. 2d 12, 15, 16. There union members sought to resign from the union without observing the applicable by-law, and asserted that their subsequent discharge from employment

for failure to pay dues violated Section 7 and Section 8(b)(1) of the Act. In rejecting that view, the Court of Appeals noted that while any worker may refrain under Section 7 from joining the union, *"it is quite another thing when the employee eschews his 'reluctance' and voluntarily joins a labor organization. At this point, under our view, the employee takes off the protective mantle of Section 7's 'refraining' provision and renders himself amenable to the reasonable internal regulations of the organization with which he chooses to cast his lot."* And the Court concluded:

> ". . . under Section 7 of the Act, and in the light of the limited security agreement which obtained between the Company and the Union in the instant case, the subject employees need not have joined the Union. However, once they voluntarily took that step, they embraced not only the benefits but also the burdens which flowed from their union membership. One of those 'burdens' was the duty of comporting with the Union's reasonable internal regulations; a requirement they failed to discharge here."

2. *Privilege of Membership Imports Allegiance.* Like other voluntary associations, trade unions were largely free until recent years from legal restraints on their internal affairs. Nineteenth century doctrine generally excepted private associations from jurisprudential interference. Starting from an original "hands off" policy, courts and legislatures have moved warily toward an increasingly elaborated area of membership rights subject to legal protection. See, generally, Chafee, *The Internal Affairs of Associations Not for Profit,* 43 Harv. L. Rev. 993; Summers, *Legal Limitations on Union Discipline,* 64 Harv. L. Rev. 1049. But increasing concern to protect democratic procedures and civil liberty within the union has not

expunged the union's traditional right to establish and the member's corollary duty to honor, those necessary basic obligations which are the counterpart of his rights within it. See, e.g., *Polin* v. *Kaplan*, 257 N.Y. 277, 281-282, 177 N.E. 833; *Shinsky* v. *Tracey*, 226 Mass. 21, 114 N.E. 957; *Kitt* v. *United Steelworkers*, 59 York Leg. Rec. (Pa.) 29; *Snay* v. *Lovely*, 276 Mass. 159, 176 N.E. 791; *Lawson* v. *Hewel*, 118 Cal. 613, 50 P. 763. As emphasized in Oakes, *Organized Labor and Industrial Conflicts*, § 61:

> "By uniting with the union the member assents to and accepts the constitution and impliedly binds himself to abide by the decision of such boards as that instrument provides for the determination of the disputes arising within the association. The decisions of such tribunals, when organized under the constitution and lawfully exercising their powers, are of a quasi judicial character, and are no more subject to collateral attack for mere error than are the judgments of a court of law. The court will look into the record to ascertain whether the disciplinary proceedings were pursuant to the constitution and by-laws of the association, whether the proceedings were in good faith, whether the charges are substantial, and whether the member has had fair notice and opportunity to be heard; but will not substitute its judgment for that of the organization."[5]

Clearly, a legal doctrine which upholds only membership rights but not membership obligations would undermine the viability of any voluntary association. The logic of this elementary principle, which cannot be seriously controverted, underlies the decisions of this Court in *Elgin, Joliet* v. *Burley*. Both in its initial opinion remanding the

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[5] See also Summers, *Law of Union Discipline*, 70 Yale L.J. 175, 179; Note, 76 Harv. L. Rev. 983, 995, 1001.

case for interpretation of pertinent union regulations (325 U.S. 711), and in its subsequent opinion on rehearing clarifying its original mandate (327 U.S. 661), this Court reaffirmed the established proposition that members of unions are bound by the terms and conditions of their membership. In *Elgin, Joliet,* a union acting on behalf of and with the knowledge of a number of its members, had settled a money grievance which those members had against their employer, and had represented them before the National Railroad Adjustment Board in proceedings which resulted in a ruling that the settlement, made by the union on behalf of its members, by its terms precluded further claims arising out of the same grievance. Subsequently, an action was brought for recovery on the same claim which had been settled and released by the union. The question reviewed by this Court was whether the union had been authorized to settle the individual worker-member's claim. Although the Court found that it lacked sufficient information on which to make a final decision on the question of the union's authority to settle, the opinion remanding to the lower court for further findings explained (325 U.S. at 738, n. 38) that such authority

> "might be conferred in whatever ways would be sufficient according to generally accepted or 'common law' rules for the creation of an agency, as conceivably by specific authorization given orally or in writing to settle each grievance, by general authority given to settle such grievances as might arise, or by assenting to such authority by becoming a member of a union and thereby accepting a provision in its constitution or rules authorizing it to make such settlements."

Before the remand order had issued, this Court granted rehearing. In its opinion on rehearing the Court's reliance on the union constitution, by-laws, and rules as the basic

documents governing and binding union members was re-emphasized (327 U.S. 661, 663, n. 2):

> "Furthermore, so far as union members are concerned, and they are the only persons involved as respondents in this cause, it is altogether possible for the union to secure authority in these respects within well established rules relating to unincorporated organizations and their relations with their members, by appropriate provisions in their by-laws, constitution or other governing regulations, as well as by usage or custom . . ."

Thus, this Court in *Elgin, Joliet* gave full effect to the obligation undertaken by the union's members to accept the union's representation of their working rights, even to the extent of settling and extinguishing "vested" money benefits earned by the individual employee-member. The dissenting opinion by Justice Frankfurter (325 U.S. at 757-758) aptly summarized the proposition which in *Elgin, Joliet* commanded the approval of the entire Court and underlay its ultimate ruling, observing that with respect to union membership:

> "If resort to courts is at all available, it certainly should not disregard and displace the arrangements which the members of the organization voluntarily establish for their reciprocal interests and by which they bound themselves to be governed."

Of significance, too, is the fact that both opinions upholding this principle were issued only a short time before the enactment of Taft-Hartley. The proximity of these decisions to the enactment of Section 8(b)(1) adds further support, if any were needed, to the proposition that Congress could not have intended by mere implication to deprive

unions of a basic right so recently confirmed by the highest court of the land. It is doubly improbable that the accepted power of unions to define the terms and duties of membership which this Court honored in *Elgin, Joliet* should have been impaired by mere implication in the very statute which *prohibited* compulsory unionism.

Had the Congress in the text and legislative history never spoken on the subject of union discipline, there would still be no warrant for deeming time-honored union disciplinary power extinguished by the general "restrain or coerce" clause directed to *employee rights* rather than *union member* privileges and obligations. But Congress having provided ample legislative history, and having expressly preserved union discipline by the proviso to Section 8(b)(1)(A), it becomes even clearer that the freedom from compulsory membership which Congress preserved in Section 8(a)(3) repels the statutory construction indulged by the majority in the lower court. The correct reading, which preserves the manifest Congressional intention, is that Section 8(b)(1), read in tandem with Section 8(a)(3)'s prohibition on compulsory membership, does not concern itself with labor union discipline to enforce allegiance of members to organizational obligations. That construction is all the more appropriate, as we next show, where the organizational obligation being enforced by discipline is the long-recognized first duty of union members to respect a collective strike for improved working conditions.

B. *Adherence to a Membership Strike for Improved Working Conditions Is a Time-Honored First Duty of Unionism.*

Among the recognized obligations of union membership, the clearest is the obligation to respect the collective strike, which is the very essence of unionism and the first principle of union action. The withholding of labor by an economic

strike lies at the very heart of the association of workers in a union, and indeed often constitutes the catalyst by which the union is nurtured.

The strike is today generally viewed as the most important weapon of trade unionism. When the right to strike suffered serious abridgement from hostile courts and legislatures during the early decades of this century (Frankfurter & Greene, *The Labor Injunction, passim*), Congress in 1932 enacted protective legislation in the Norris-LaGuardia Act intended to bar further "government by injunction". Not content with that remedial measure, a few years later Congress in the Wagner Act granted power to the new Labor Board to secure the right to strike. A number of witnesses testifying in 1934 and 1935 pleaded for Congressional protection and preservation of labor's right to strike; for example, Sidney Hillman, President of the Amalgamated Clothing Workers, emphasized and praised the Wagner bill's "*proper provisions for guaranteeing labor the right to strike, a right that labor cannot possibly give up under any conditions . . .*" Hearings on S. 2926 Before the Senate Committee on Education and Labor, 73rd Cong., 2d Sess. 123 (1934). The chairman of the House Labor Committee, co-author of the bill, referred to the right to strike as "not a right that comes from Congress, but . . . a divine right which comes from the Almighty God" (79 Cong. Rec. 9730). As finally enacted, the statute expressly preserved the right to strike (Section 13) and gave meaningful protection to economic strikers and unfair labor practice strikers against discharge, replacement, and discipline.

A decade later, Senator Robert Taft, the conservative Majority Leader of the Senate, reaffirmed the sanctity of labor's valued strike weapon. He recognized that in his Taft-Hartley bill, "we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining" (93 Cong. Rec. 3835). And,

in defending the bill's national-emergency-strike provisions against those who advocated that such a strike be outlawed, Senator Taft stated that:

> ". . . we have not forbidden it, because we believe that the right to strike for hours, wages and working conditions in the ultimate analysis is essential to the maintenance of freedom in the United States . . . our freedom depends upon maintaining the free right to strike" (93 Cong. Rec. 7537).

Consistent with Senator Taft's statements, the Taft-Hartley Congress left the right to strike basically unimpaired.

The Congressional recognition in 1932, 1935 and 1947 of the strike as labor's indispensable weapon reflects the prevalent understanding derived from our national labor relations experience. As Professor Charles Gregory has written (*Labor and the Law*, p. 106): "Combination and concerted action are the very backbone of the whole union movement. While devices like picketing and refusals to patronize are important phases of concerted action, virtually the entire structure of a union's self-help program rests on one simple practice—the refusal to work. The strike is the most simple manifestation of this practice. Indeed, it is, in a manner of speaking, its only manifestation."

In view of the central significance of the strike to the existence of the union and the perpetuation of its members' interests, it has long been recognized that unions may properly discipline members who defy an authorized strike as well as those who engage in an unauthorized strike. ". . . to maintain efficiency as an effective bargaining unit, a union may discipline members who persist in working on an unfair job or to the detriment of a strike, and those who engage in unauthorized strikes" (76 Harv. L. Rev. 983, 1012-1013; see also Summers, *Law of Union Discipline*, 70 Yale L.J. 175, 188-189). The basis upon which union dis-

ciplinary power to control the strike weapon is legally recognized was aptly set forth in a decision of the Supreme Court of Massachusetts which upheld severe union discipline of a member defying a strike edict. In *Clark* v. *Morgan*, 271 Mass. 164, 169-171, 171 N.E. 278, the Court ruled:

> "The plaintiff . . . agreed to be bound by the rules of the organization and subjected himself to its discipline. . . . The district council . . . had jurisdiction of offenses against the general laws committed within its jurisdiction by members from outside locals. It is true that the particular offense charged against the plaintiff is not specifically prohibited. But the constitution of the brotherhood enacted that any member who is guilty of improper conduct 'or wrongs a fellow-member * * * or commits an offense discreditable to the United Brotherhood, shall be fined, suspended or expelled.' The plaintiff was a member of the union. He testified that he knew no member should work on a job on which there was a strike, and he admitted that, according to the well known custom, it violated the constitution to work under such conditions if known; that it was injurious to his fellow members to be so employed. As bearing on this question, parol evidence was admitted . . . showing that by long established usage, universally acknowledged, the offense charged against the plaintiff could be punished by the brotherhood or its district councils. This evidence, in our opinion, was admissible, not to contradict the written constitution, but to show the universal usage or custom in dealing with such complaints as working with nonunion men or working for one against whom a strike had been called."

The power to discipline members for helping break a strike and for unauthorized strikes is an indispensable attribute of union solidarity.[6] "The power to fine or expel strikebreakers is essential if the union is to be an effective bargaining agent" (Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049), because working during a strike "undercuts the union's principal weapon and defeats the economic objective for which the union exists" (Summers, *Disciplinary Powers of Unions*, 3 Ind. & Lab. Rel. Rev. 483, 495).

No less necessary to union control of the valued strike weapon is union power to discipline wildcat strikers—a power which the statutory construction by the court below would equally impair. If the statute should be deemed violated by union discipline of members in the area of strike participation, it is as much violated by discipline of unauthorized strikers as by discipline of those who work during an authorized strike. The majority below seeks to

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[6] "It is so obvious that a union may punish its members for engaging in an unauthorized strike that the courts have never bothered to discuss the matter. A parent union may even revoke the charter of the local which engages in a wildcat strike and thereby expel all of the members in that local. Disciplining wildcat strikers may not only be a power but a positive duty of the union. Thus, a parent union has suspended a local because it failed to prosecute aggressively individual strikers, and in another case, an arbitrator held that under the special terms of the collective agreement involved, the union had broken its contract by failing to discipline members who had engaged in a stoppage.

"Strikebreakers receive little more protection than wildcat strikers. The union may punish not only those who do the work of men who are on strike, but also those who give the employer any other aid during the strike. Thus, a federal court upheld the expulsion of a member of the Locomotive Engineers who allowed the employer to use his name in suing to enjoin the strike. Even though the member felt the strike was unwise, improper, and highly unpatriotic, this conduct, the court pointed out, was viewed by the union to be the equivalent of treason—it was adherence to the enemy in time of struggle, giving him aid and comfort." Summers, *Legal Limitations on Union Discipline*, 64 Harv. L. Rev. 1049, 1065-1066.

avoid the force of this point by suggesting that discipline of those who engage in a wildcat strike presents a different situation from the case at bar, because wildcat strikes "are not protected activities" under the Act (R. 103). True, during the life of a collective bargaining agreement containing a no-strike clause, striking is unprotected; but at the contract's expiration the statutory right to strike is fully restored. Thus, in construing the Act as precluding a union from fining members who work during an authorized strike, the court below necessarily precludes the fining of members who engage in an unauthorized strike.

The Court of Appeals for the Fourth Circuit has had occasion to review a case where severe disciplinary action had been taken against a local and its members for engaging in a strike not authorized in accordance with the union's constitution. In *Parks* v. *IBEW*, 314 F.2d 886, 905-6, *cert. den.* 372 U.S. 976, in approving such discipline the Court emphasized, in terms pertinent to the issue presently before this Court, the integral interest of a union in policing the subject of strike participation:

> "... the District Court found that the IP [International President] had been motivated in part by a legitimate desire to discipline the Local, its members and officers, for having engaged in an unauthorized strike even after his repeated orders to return to work.
>
> "The calling of a strike is such a momentous step in a labor controversy that it is usually subjected to strict control by international unions. The strike is a weapon that can bring an employer to his knees; but the effect on the employer can be too devastating for the union's own good. In addition, a strike can result in undue loss of production, harmful to the public, and a strike can waste a union's funds and otherwise

weaken it in its continuing effort to better its adherents' wages and working conditions.

"It is widely felt that vesting control in the international over the strike weapon assures that generally only intelligent and responsible use will be made of it after the greater interests of the international and the general economy have been considered. Such is the potential harm from indiscriminate resort to strikes that Professor Summers has commented that an international is justified in adopting severe disciplinary measures, including expulsion of individual members or revocation of a local union's charter, when an unauthorized strike has been undertaken. Summers, 'Legal Limitations on Union Discipline,' 64 Harv. L. Rev. 1049, 1065-1066 (1951).

"The refusal to sanction the June strike cannot be said to be a breach of a fiduciary duty owed the plaintiffs under the Constitution. If the IP believed that an appropriate Council clause could be negotiated and that Local 28 was excessive in its demands and 'shooting for the moon,' it was his prerogative to restrain the Local, and if possible to counteract its headstrong determination to wage a strike that could adversely affect the cause of his international organization. His duty was to 750,000 members, not merely to a few who might gain a short-range advantage that could prove costly to the parent body, the employers, the public and, in the long run, to the plaintiffs themselves. The International was dealing day by day with many chapters of NECA and the International's relations with NECA were important to the welfare of all 150,000 who worked in the construction industry."

No one could reasonably question the necessity for union control over wildcat and other unauthorized strikes. Labor-management relations are largely predicated upon the union's promise and ability to control such strikes. Congress could hardly have intended to permit union discipline of members when they strike but to deny unions the right to require membership adherence to an authorized strike. In fact, Congressional recognition of necessary union disciplinary power against both members working during authorized strikes and those engaging in unauthorized strikes was manifested in the debates preceding enactment of Section 8(b)(1) in 1947. On the floor of the Senate an amendment was moved by Senator Ball (93 Cong. Rec. 4442) to limit disciplinary powers of national and international unions over their locals in certain instances, including the situation (see remarks of Senator Taft at 93 Cong. Rec. 4444, 4452, 4580) in which a local declines to continue a strike ordered by a parent union. The amendment was ultimately defeated (93 Cong. Rec. 4676) after the opponents emphasized the necessary power of union discipline, including power to preserve control of the vital strike weapon. As Senator Ives stated it (93 Cong. Rec. 4583, 4674):

> ". . . in what is being attempted here we are encouraging the local set-up, the local organization, to break away. What is proposed would destroy responsibility, which is basic in labor organizations . . . there is one feature in the labor relations picture which is absolutely vital. There can be no responsibility unless there is some control and authority somewhere. By the destruction of such control and authority, the responsibility itself also is destroyed. I think that should be definitely understood in considering the pending amendment."

Senator Taylor objected to the amendment (93 Cong. Rec. 4587) stating that:

> ". . . if a national labor organization has no power to impose sanctions of any kind upon a subsidiary union how can it hold together? . . . If the parent organization has no power to discipline the local organization at all, to revoke its charter, or even take its funds if it disobeys the rules and regulations laid down by the parent organization which it knew about when it joined the parent union—if the parent union has no power to do those things, it would disintegrate completely . . . the local union could strike and could do anything it pleased . . ."

Senator Morse emphasized (93 Cong. Rec. 4670, 4675) that local unions:

> ". . . voluntarily become parties to the international union. This amendment would enable them to abide by the constitution of the international union according to their own pleasure; but when it did not please them to abide by it, irrespective of the effect their conduct might have on other locals which likewise agreed to become members of the international union, they would have the right, in effect, to secede . . . to the extent of repudiating the obligations which they agreed to carry out when they became members of the international union . . . I think it is very important to emphasize, in the closing minutes of this debate, that international unions have their constitutions approved by the local unions . . . When we come to the major strike cases we find in most instances that such strikes are called after the delegates of the local unions, working through the international policy committee to carry out the wishes of the local union, have voted for strike action."

The necessity of union disciplinary power to assure continuing allegiance by the membership, which the 1947 debates underlined, has even more recently been Congressionally confirmed. In 1959 union authority to require and enforce by discipline the member's allegiance to the common cause was expressly secured by the Congress. Section 101(a)(2) of the Landrum-Griffin "Bill of Rights", as originally proposed by Senator McClellan, provided freedom of speech rights for members within a union (105 Cong. Rec. 6475). However, it soon became clear that even as valued a right as freedom of speech has to be subject to some limitation when it comes to speech advocating acts which undermine the union and its cause (see 105 Cong. Rec. 6719, 6726). Accordingly, Senator Kuchel proposed and Congress accepted a reservation to this section which provides *"that nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations"* (105 Cong. Rec. 6693, 6727).

Commentators on this Landrum-Griffin proviso agree that it means no less than what it says: a union must have self-protective disciplinary power over its own members, which includes the right "to adopt and enforce reasonable rules as to the responsibility of every member toward the organization." As Professor Archibald Cox states it (*Internal Affairs of Labor Unions*, 58 Mich. L. Rev. 819, 834-835): ". . . dissent in a union, like treason within a nation, must be suppressed if the purpose is to destroy the union, encourage a rival, or bring about the violation of legal or contractual obligations. Section 101(a)(2) contains an exception for these cases." Former Labor Board General Counsel Rothman agrees (*Legislative History of the "Bill of Rights" for Union Members*, 45 Minn. L. Rev.

199, 207) that the proviso was written to permit "the union to guard against anti-union activities within the union."[7]

How can Congress be deemed to have forbidden in 1947 in Section 8(b)(1) of Taft-Hartley what it has specifically approved in the "union responsibility" proviso of Landrum-Griffin? Or, put another way, on what possible premise would Congress have protected a union disciplinary power in the 1959 Act which unions were already forbidden to exercise under the NLRA? Such sheer idiosyncracy cannot be ascribed to Congress in its 1959 enactment of the Section 101(a)(2) proviso. Rather, Congress can only be deemed in 1947 to have left unimpaired traditional union discipline to assure membership solidarity during authorized strikes and the ability to prevent unauthorized strikes.[8] And, having left traditional union discipline unimpaired, there is no warrant, as we next show, for implying congressional hostility to a fine as distinguished from other disciplinary methods.

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[7] "The member's institutional responsibility probably does not include a duty to refrain from criticism of the union hierarchy, even to the point of slander or libel, but it probably does include the obligation to refrain from acts which would tend to undermine or disrupt the organization as such. This no doubt encompasses 'dual unionist' conduct as generally understood." Smith, *The Labor-Management Reporting and Disclosure Act of 1959*, 46 Va. L. Rev. 195, 204.

[8] It is a fair reading of the history of labor legislation that the first time Congress really directed its attention to union discipline (beyond the narrow area involved in *Radio Officers*) was not in 1947 but twelve years later when the McClellan Committee hearings focused attention on needed reform. Landrum-Griffin rather than Taft-Hartley deals with the subject of union discipline, and Section 101(a)(5) of the 1959 statute actually confirms that union members *"may be fined, suspended, expelled, or otherwise disciplined."* Landrum-Griffin was the first manifestation, and constitutes the present extent, of Congressional limitation upon union discipline. And, far from precluding such discipline, the 1959 legislation recognizes the appropriate role of discipline to assure "the responsibility of every member toward the organization."

C. Reasonable Fines Collectible by Legal Action Offend No Congressional Norm and Are Frequently Less Rigorous Than Summary Expulsion From Union Membership.

In the preceding discussion we have emphasized that Congress—at the very time that it enacted Section 8(b)(1)—assured that labor union membership cannot be compelled, and continued to recognize the necessary power of union discipline to enforce reasonable norms of allegiance by the membership. These considerations, we have urged, give additional support to the text and legislative history of Section 8(b)(1) upon which the Labor Board primarily relies. But perhaps we have labored unnecessarily to demonstrate that reasonable union discipline is a power left unimpaired by the statute, for actually the Company has not squarely espoused a contrary construction nor, it would appear, has the court below. The thrust of the Company's objection which the lower court appears to have accepted is limited to the point that instead of suspension or expulsion the Union has chosen as the means of discipline the imposition of judicially-collectible monetary fines.

But "the limits which the courts have placed on union discipline seem to have no relation to the severity of the penalty imposed, but are instead governed by the conduct which the union has sought to punish and the procedure used for determining the member's guilt." Summers, *Law of Union Discipline*, 70 Yale L.J. 175, 179. If the statute does not bar union power to discipline members who violate their obligations of allegiance by working during an authorized strike, it cannot be that the imposition of modest fines constitutes some special and uniquely impermissible sanction which Congress implicitly forbade in contrast to other forms of union discipline. Indeed, fines constitute a traditional and historically ac-

cepted means of discipline against offending union members. As stated in a comprehensive survey by Professor Clyde Summers (*Disciplinary Procedures of Unions*, 4 Ind. & Lab. Rel. Rev. 15, 26; cf. Mass. Gen. L., c. 180, Sec. 19, Act of 1911, C. 431):

> "The culminating element of union discipline is the infliction of a penalty on the convicted member. The three common types of penalties for offenses are fines, suspension for a limited period, and expulsion . . . [and] the most common form of penalty is the fine."

Consistent with the established union power to fine offending members, no decision prior to this case either under the National Labor Relations Act or the common law has denied union authority to fine members who violate their organizational obligations. Decisions which have confirmed that authority include the rulings of the Seventh Circuit in *NLRB* v. *Amalgamated Local 286*, 222 F. 2d 95; the D.C. Circuit in *Barker Painting Co.* v. *Brotherhood of Painters*, 23 F. 2d 743, *cert. den.* 276 U.S. 631; and the Wisconsin Supreme Court in *UAW* v. *Woychik*, 5 Wis. 2d 528, 93 N.W. 2d 336; cf. *Rothstein* v. *Manuti*, 235 F. Supp. 39, 45-46; *Simpson* v. *Painters and Glaziers District Council No. 51*, 39 LRRM 2131 (D.C.D.C.); *Rubens* v. *Weber*, 260 N.Y.S. 701, 237 App. Div. 15; *United States Rubber Co.*, 21 War Lab. Rep. 182; *Otto v. Journeymen Tailors' P & B Union*, 75 Cal. 308, 17 P. 217; *Meurer* v. *Detroit Musicians Benevolent & Protective Association*, 95 Mich. 451, 54 N.W. 954; *Fuerst* v. *Musical Mutual Protective Union*, 95 N.Y.S. 155; *McGinley* v. *Milk & Ice Cream Salesmen, D&D*, 351 Pa. 47, 40 A. 2d 16; *Monroe* v. *Colored Screwmen's Benev. Ass'n*, 135 La. 893, 66 So. 260. As long ago as 1867, a landmark New York ruling in a suit for collection of a fine upheld union power to fine a member for violation of his organizational obligations. In *Master Stevedores' Association* v. *Walsh*, 2 Daly 1 (N.Y. Common Pleas), the Court upheld a

$125 fine as an appropriate discipline for violation of the obligation of a member of a stevedores' union not to work for less than the union-prescribed rate of pay. In so doing, the Court (at p. 10) relied heavily upon an English statute (the Act of 5 George IV c. 95) as declaring for the first time the lawfulness of associations for the purpose of "determining the rate of wages which the persons so assembling shall require or demand" and recognizing that "they may enter into any agreements . . . among themselves, for the purpose" sanctioned by the statute. Having thus upheld the underlying organizational norm whose violation had led to the monetary fine imposed, the Court concluded (at pp. 13-14):

> "If the by-law is one which it is in the power of the corporation to make, it has the power also to attach to it a penalty for the purpose of enforcing it. All who become members of the corporate body are bound by it, and where the penalty is incurred an action may be brought in the name of the corporation to recover it . . . The proper mode of enforcing a by-law is by a pecuniary penalty . . ! The words of the by-law are, that the party shall forfeit to the association twenty-five per cent of the amount of such bill as fixed by the association, *which penalty* may be collected by due process of law . . ."

The Company, without citing a single precedent, persistently refers to a judicially-collectible union fine as "coercion", seeking thereby to equate that sanction with the inducement of an employer to dismiss or otherwise discipline a worker which Section 8(b)(1) forbids. But the law has never regarded legal sanctions—particularly sanctions flowing from a court judgment enforcing a fine or debt—as synonymous with coercion. Every system of legal sanctions, from the lowest form of traffic fine for violating the rules of the road to compensatory and liquidated dam-

ages for breach of contract, is coercive in the sense that it seeks to compel general obedience to a prescribed norm. But rather than *coercion*, judicial processes are *remedies* to secure the observance of contractual agreements and other binding rules of conduct. It is unthinkable that Congress, recognizing the propriety of union discipline in general, should have deemed judicially-collectible fines uniquely coercive when it adopted Section 8(b)(1)(A).

Moreover, while in some circumstances an individual union member might find non-monetary discipline—even dismissal from the union—preferable to paying a fine, it is clear that the latter may frequently be far less serious. For the offending member suspension or outright expulsion from union membership may mean loss of such valuable privileges as, for example, group insurance, death payments and similar benefits. And, since an affirmative award by a court is required before a union can collect a fine against a dissident member who refuses to pay, one who objects to the amount or the circumstances of a fine imposed upon him has full judicial protection in the court wherein suit is commenced for collection. Thus, upon comparing the relative compulsions and rigors of reasonable judicially-collectible fines on the one hand and summary expulsion from a union on the other, it seems evident that the former are often the less severe: Expulsion is a terminal act of self-help by the union which may have the most serious unfavorable consequences upon the individual affected; suit for collection of a disciplinary fine invokes the judicial process, which centuries of experience approve as the best means for protecting the rights of contending parties.[9] This comparison leaves no room for

[9] Expulsion or suspension may be more drastic for yet another reason. The fined member may desire, as in the case of some Allis-Chalmers workers, to pay his penalty and avoid further controversy with his union. But where the punishment is expulsion or suspension, no comparable opportunity exists for the disciplined member to regain his organizational rights by the expedient of compliance.

the implication that Congress, while sanctioning dismissal from the union, singled out judicially-collectible disciplinary fines for proscription.

All apart from the unwarranted characterization of collectible fines as confiscation and coercion, there is also no merit to an analogy with the employment sanctions which Congress in Section 8(b)(1) has forbidden to unions for enforcing membership obligations. When it comes to such employment sanctions, Congress was concerned with the dual role of unions, which as collective bargaining representatives are in a position to induce an employer to discipline a worker who has defaulted on his obligations not to the employer but only to the union. Accordingly, what the Congress said in this area, and all that it said, is that the union may not turn to the employer for assistance in disciplining a union member. But the fact that Congress has barred a union's recourse to employment sanctions to enforce its members' allegiance hardly demonstrates that Congress has precluded a union's unilateral disciplinary action by which it seeks to hold members to their organizational obligations.

In sum, once it is recognized that reasonable union discipline of members who violate their allegiance obligations was left intact by Section 8(b)(1), there is no merit to an attack which would single out judicially-collectible fines as a uniquely objectionable means of discipline. Congress nowhere having disparaged union disciplinary fines, judicial engrafting of such a prohibition upon the statute would arrogate the legislative function.

D. *The Statute's Purpose to Promote Effective Collective Bargaining Precludes the View That Section 7 Safeguards a Union Member's Right to Defy the Common Cause as Determined by Majority Rule.*

The discussion to this point has proceeded largely upon the assumption that Section 7 of the Act protects the right of abstention from strike participation, and that the issue for decision is whether Congress in Section 8(b)(1) intended to reach discipline of union members who defy an authorized economic strike. But there is also a question whether Section 7 actually protects the right of one who has chosen to join a labor union to defy reasonable union action undertaken in the common interest by the majority rule process. Thus, even if all of the Section 8(b)(1) considerations and arguments we have advanced above were somehow to be rejected by this Court, there would still remain a serious question whether under Section 7 itself Congress has secured a right of union members to defy and subvert authorized union action.

That question becomes the more acute in the present case, where the Section 7 right of defiance said to belong to a dissident union member would impair the live-or-die power of the union to invoke an effective strike for improved collective bargaining benefits. After all, the central purpose of the Congress in enacting the National Labor Relations Act, as this Court has often emphasized, was the promotion of labor-management agreements through genuine collective bargaining. Every statutory construction issue under the Act is appropriately resolved against the background of that central Congressional purpose. And certainly there is manifest disruption of orderly labor-management relations in the denial to unions of power to control the crucial strike weapon—a disruption which

strongly militates against the statutory construction espoused by the court below.[10]

Ultimately, the argument that the Union has violated Section 8(b)(1) reflects a literalistic effort to prove a violation of the Act through arithmetic progression. According to the Company, (1) Section 7 protects an employee's right not to strike, (2) the UAW members fined for picket-line crossing are employees, (3) *ergo* their Section 7 rights were violated, and (4) it follows inexorably that the Union violated their Section 8(b)(1) rights. One obvious hole in this progression is in the very first assumption. While Section 7 does protect an employee's right not to strike, it does not protect the right of a *union member-employee* to defy a union strike—it does not grant an employee the simultaneous right of union membership and union disobedience.

This Court in *NLRB* v. *Drivers*, 362 U.S. 274, 280, recognized that Section 8(b)(1) is not subject to mechanical application. Rather, the Court noted that tension may exist "between the two rights of employees protected by §7—their right to form, join or assist labor organizations, and their right to refrain from doing so." In the present case,

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[10] To the view that Section 7 gives a union member immunity from a disciplinary fine if he crosses a duly authorized union picket line, the Circuit Court for Milwaukee County has made the following appropriate response in the *Natzke* case, involving collection of a fine against a UAW member disciplined for working during the 1959 Allis-Chalmers strike (unpublished opinion of March 3, 1964, Case No. 313-673):

> ". . . [Section 7] gives employes the right to refrain from any or all of the activities above mentioned except to the extent that such right may be affected by a "closed shop" agreement and also by the extent to which an employe joins a union. In this case the defendant was found to be a full member of the union for all purposes and, therefore, there was no express right of the defendant violated.
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> "As was stated in *Local 248, U.A.A.&A.I.W* v. *Wis. E.R. Board*, 11 Wis. (2d) 277, 288: 'A union without power to enforce solidarity among its members, when it resorts to a strike in an effort to force an employer to agree to its collective-bargaining demands, is a much-less-effective instrument of collective bargaining than a union which possesses such power. A union must have authority to discipline its members, otherwise it will have no power to bargain effectively.'"

too, a "tension" exists but it is of a somewhat different order. Here we do not have one group seeking unionization while another is in opposition. Instead, certain union members sought to enjoy the privileges of unionism without paying the elemental price of loyalty to their fellow members. *Their conduct was not an assertion of the statutory right to refrain from forming, joining and assisting unions—a right they had renounced by joining the UAW; rather, it was a violation of the right of the striking unionists to engage in a Section 7 activity without subversion by their fellow members.* No Section 7 right of the dissident members was violated by their discipline, but their defiance of the strike *did* violate the Section 7 right of their co-unionists to engage in effective union and concerted strike activities.

Section 7 of the Act safeguards an employee's right to strike and his right to refrain from striking, but in neither instance is the right absolute. Thus, the right to strike bows before a collective agreement wherein the union consents to a "no strike" clause (*NLRB* v. *Sands Mfg. Co.*, 306 U.S. 332) and before an internal regulation against membership strikes unauthorized by the union (*Parks* v. *IBEW*, 314 F. 2d 886). And this Court ruled in *American Ship Building Co.* v. *NLRB*, 380 U.S. 300, 310, that an employee's right to refrain from striking also bows before the employer's right in certain circumstances to undertake a lockout of all his workers which in effect forces them into the equivalent of a strike. Just as much as the employer's economic interest in the face of a possible strike was recognized in *American Ship* to permit a lockout precluding employees from working, the union has the economic right to make its strike effective by a solidarity rule requiring all its members to respect the strike.[11]

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[11] The closest parallel, we submit, exists between the present issue and the one before this Court in *NLRB* v. *Rockaway News Supply Co.*, 345 U.S. 71. There, the union and employer having agreed to a no-strike clause, a union member, by refusing to cross a picket line, participated in a strike

Of course, the union cannot impose arbitrary restrictions or penalties as a condition of membership. A union by-law imposing racial or religious discrimination, restricting fundamental rights of speech or expression by individual members, or requiring political contributions by members, presents considerations beyond those involved in the present case. Professor Cox properly notes, in discussing the expulsion of members from labor unions, that "possibly one can generalize by saying that an expulsion is permitted for conduct endangering normal trade-union objectives, but that an expulsion will be set aside if the alleged misconduct consisted of the performance of a civic duty or the exercise of personal civil liberties." *The Role of Law in Preserving Union Democracy*, 72 Harv. L. Rev. 609, 617. Legal limitations on union discipline become appropriate where the intrusion on individual action which the union imposes on the member is unauthorized by the governing organizational rules or so irrelevant to the legitimate collective interest as to be wholly arbitrary and unreasonable. See, e.g. *Meurer* v. *Detroit Musicians Benevolent & Protective Association*, 95 Mich. 451, 54 N.W. 954; *Otto* v. *Journeymen Tailors, P&B Union*, 75 Cal. 308, 17 P. 217; *Schneider* v. *Local Union No. 60*, 116 La. 270, 40 So. 700.[12]

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not authorized by the union. He was discharged from employment by arrangement between the union and the employer after he had refused admonitions to return to work. This Court ruled (at pp. 80-81) that notwithstanding the protected right to strike an employee may be discharged for breach of a no-srike agreement "without violating Section 7 of the Act." It specifically held that the union and the employer are empowered to contract both a guarantee *against* "requiring an employee to cross a picket line" and a guarantee that he *will do so* if a strike has been contractually forbidden. We submit that if, as this Court held in *Rockaway News*, an employee's Section 7 right to strike may be waived without his consent by the union in a contract with the employer, it follows *a fortiori* that an employee may, by joining the union, effectively waive both his right to strike without the concurrence of the union and his right to defy an unauthorized union strike.

[12] In *Local 138, Operating Engineers* (*Charles S. Skura*), 148 NLRB 679, and subsequent rulings, the Board has found Section 8(b)(1) violated

But, as this Court emphasized in a related context, when "within reasonable bounds of relevancy" the union's determination of the general rule necessarily overrides minority interests and "complete satisfaction of all who are represented is hardly to be expected." *Ford Motor Co.* v. *Huffman*, 345 U.S. 330, 338, 342. Here we have not intrusion on a protected individual liberty, but a wholly reasonable regulation in the interest of the entire group. Workers are free, under the Section 7 right of concerted action, to associate themselves in a union and to require that those who would be members abide by reasonable regulations in the common interest. Conversely, individuals cannot assert a federally protected liberty to join labor unions on their own terms, abiding only by those regulations which they choose to honor. In the union's collective bargaining representation of its members and of the class of employees comprising the bargaining unit, "individual advantages or favors" must give way to the majority interest. See *J. I. Case Co.* v. *NLRB*, 321 U.S. 332, 339. In like manner within the union—and particularly with respect to such a cru-

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by union discipline of members for filing unfair labor practice charges with the Board. The *Skura* rule would appear to be inconsistent with the legislative history of Section 8(b)(1) upon which the Board relies. Whether it can stand at all would, in our judgment, depend upon the reasonableness of the challenged rule which the union has enforced. But even if in extreme situations union discipline for filing Labor Board charges is struck down as unreasonable, it remains clear that none of the considerations reached in favor of a violation of the Act in *Skura* arises in the present context. Thus, with respect to union discipline for filing a charge with the Labor Board, it must be noted that (i) there is an express prohibition in Section 8(a)(4) on an employer disciplining employees going to the Labor Board and symmetry supports a like prohibition on the union; and (ii) the First Amendment might be deemed to protect the right to file a charge with the National Labor Relations Board. Whereas the norm enforced by union discipline in *Skura* might be deemed subject to possible challenge as unreasonable, the norm of strike solidarity which underlies the present case is an entirely reasonable and necessary protection of the union and of its key weapon for promoting the legitimate interests of its members. The Board's expert judgment that there is no violation of law should command judicial deference even if its finding of violation in *Skura* situations may ultimately be upheld.

cial matter as solidarity in a strike for improved collective bargaining benefits—majority rule must govern, and those unwilling to abide by the majority rule system have the alternative to forego union membership. What they *cannot* do is simultaneously to claim union membership and a statutory right to abstain from union allegiance.

Conclusion

For the reasons stated above, the Labor Board's interpretation of the Act reflects the only rational result which comports with the Congressional intent. The judgment of the court below should accordingly be reversed.

Respectfully submitted,

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